

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRENT JACOBY,

Plaintiff,

vs

9:07-CV-872

CPT. PHELIX; GATES, Sgt.; and ERIC COUPAL,

Defendants.
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APPEARANCES:

BRENT JACOBY  
05-B-0361  
Plaintiff, Pro Se  
Elmira Correctional Facility  
PO Box 500  
Elmira, NY 14902

HON. ANDREW M. CUOMO  
Attorney General of the  
State of New York  
Attorney for Defendants  
Department of Law  
The Capitol  
Albany, New York 12224

ADRIENNE J. KERWIN, ESQ.  
Asst. Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Plaintiff, Brent Jacoby, commenced this civil rights action in August 2007, pursuant to 42 U.S.C. § 1983. By Report-Recommendation dated March 31, 2010, the Honorable Andrew T. Baxter, United States Magistrate Judge, recommended that defendants' motion for summary judgment be granted in part and the complaint dismissed in its entirety as to defendants Phelix and Gates; and further recommended that defendants' summary judgment

motion be denied in part as to plaintiff's claims based on retaliation and excessive force as to defendant Coupal. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the file, and the recommendations of Magistrate Judge Baxter, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. 636(b)(1).

Accordingly, it is

ORDERED that

1. Defendants' motion for summary judgment (Docket No. 37) is GRANTED in part and DENIED in part;

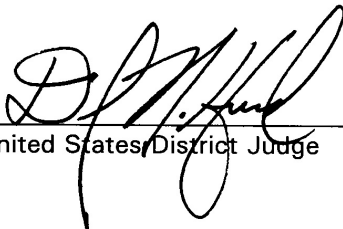
2. Plaintiff's claims based on retaliation and excessive force as to defendant Coupal are DENIED.

3. The complaint is DISMISSED in its entirety as to defendants Phelix and Gates;

4. The Clerk is directed to return the file to the Magistrate Judge for any further pretrial proceedings in this matter.

IT IS SO ORDERED.

Dated: May 6, 2010  
Utica, New York.

  
United States District Judge